

## PROBATE & ESTATE PLANNING SECTION

July 2, 2007

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Approved Court Forms

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Re: Probate Forms Committee Meeting

Dear Sir or Madam:

The Probate and Estate Planning Council is proposing a new form and some changes in existing forms for discussion at the Probate Forms Committee Meeting scheduled for September 6, 2007. In general, we are proposing changes in the enclosed forms in order to engender uniformity of practice in the probate courts.

We have enclosed a proposed change to the Letter of Authority (PC 572) to add an instruction to state that the minimum fee for a Letter of Authority is \$12. MCL 600.2546 states that the fee for certified copies is \$10 plus \$1 per page. We have been advised that SCAO's interpretation of this statutory section is that the charge for each letter of authority should be \$12 or more, depending on the number of pages. Courts are charging from \$0 to \$12 for letters of authority. An instruction indicating that the minimum charge should be \$12 may resolve this uniformity of practice issue.

A new form entitled Affidavit of Incumbency is also enclosed. Some courts are requiring this form before an estate can be closed when estate assets are poured over to a trust, even though MCR 5.501(E) provides that a trustee "may" file an affidavit of incumbency when assets from a decedent estate are transferred to a trust. Attorneys are requesting a form to deal with this requirement. We have enclosed a proposed form entitled Affidavit of Incumbency with an instruction that filing the Affidavit of Incumbency is not required by statute or court rule.

Some courts are requiring that the petitioner file the form Testimony Interested Persons (PC 565) before the court will issue an order for a small estate. Pursuant to MCL 700.3982 the court may require additional

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information. Since this requirement of filing the Testimony Interested Persons often takes attorneys by surprise, we propose to add an instruction to PC 556 warning that the court may require that the petitioner file a Testimony Interested Persons be filed along with the Petition and Order for Assignment.

There is often confusion as to what type of guardianship petition to file for a disabled person. If the cause for certain conditions occurs before age 22, a Petition for a Guardianship for a Developmentally Disabled Individual (PC 658) should be filed rather than a Petition for Appointment of Guardian of Incapacitated Individual (PC 625). In order to help the clerks at the counter to flag this issue, we propose adding a line to the Petition for Appointment of Guardian of Incapacitated Person asking about the age that the disability occurred.

The problem of valuing joint property on a conservatorship inventory is still with us. In order to flag joint assets, we propose that a separate column be added to the inventory that the conservator can check if property is held jointly with others. We also propose adding an instruction that joint property should be valued at 100% of its value, with information about the other joint owners provided in the description of the property.

We appreciate the opportunity to make suggestions to the Probate Forms Committee and to submit proposed forms for approval. Please contact Joan Von Handorf at 248-421-0477 if you have any questions or suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Mielock", written in a cursive style.

Douglas A. Mielock  
Chair of Probate and  
Estate Planning Section

Enclosures

<b>STATE OF MICHIGAN</b> <b>PROBATE COURT</b> <b>COUNTY</b> <b>CIRCUIT COURT - FAMILY DIVISION</b>	<b>PETITION FOR</b> <b>APPOINTMENT OF GUARDIAN OF</b> <b>INCAPACITATED INDIVIDUAL</b>	<b>FILE NO.</b>
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- (A)** In the matter of \_\_\_\_\_ **XXX-XX-**  
Alleged incapacitated individual Last four digits of SSN
- (B)**

Date of birth	Race	Sex	Address of alleged incapacitated individual where now found
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- (C)** 1. I, \_\_\_\_\_, am interested in this matter  
Name (type or print)  
 and make this petition as \_\_\_\_\_  
State interest/relationship
- (D)** ☐ 2. An action within the jurisdiction of the family division of circuit court involving the family or family members of the above  
 named person has been previously filed in \_\_\_\_\_ Court, Case Number \_\_\_\_\_, was  
 assigned to Judge \_\_\_\_\_, and ☐ remains ☐ is no longer pending.
- (E)** 3. The adult is a resident of \_\_\_\_\_,  
City, village, or township County State  
 and has a home address of \_\_\_\_\_  
Address City State Zip
- ☐ The individual is a citizen of the following foreign country: \_\_\_\_\_
- (F)** 4. The adult has: ☐ a patient advocate/power of attorney for health care (specify name and address below):  
☐ a power of attorney (specify name and address below):  
☐ a conservator (specify name and address below):  
 \_\_\_\_\_  
Name and address
- (G)** ☐ 5. ☐ The patient advocate designation was not executed in compliance with MCL 700.5506.  
☐ The patient advocate is not complying with the terms of the designation or of MCL 700.5506 to 700.5512.  
☐ The patient advocate is not acting consistent with the ward's best interests.
- (H)** 6. The adult lacks sufficient understanding or capacity to make or communicate informed decisions due to the following  
 conditions: ☐ mental illness ☐ mental deficiency ☐ physical illness or disability  
☐ chronic intoxication ☐ chronic drug use ☐ \_\_\_\_\_  
 This condition first occurred at age \_\_\_\_\_.
- (I)** 7. Following are specific facts about the adult's recent condition or conduct that lead me to believe the adult needs a guardian:  
 (Attach a separate sheet if more space is needed.)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- (J)** 8. The name, address, and telephone number of the person/agency (if any) who currently has care and custody of the adult  
 are:  
 \_\_\_\_\_

SEE SECOND PAGE

Do not write below this line - For court use only